

DRAFT RECLAMATION MANUAL RELEASE

Comments on this draft release must be submitted to owalker@usbr.gov by June 7, 2010.

Background and Purpose of Draft Directive and Standard (D&S) Reclamation Standard Water-Related Contract Articles, Standard Article 33: Environmental Stewardship (PEC 10-33)

Executive Order 13423, *Strengthening Federal Environmental, Energy and Transportation Management* (EO 13423), as amended and supplemented by Executive Order 13514, *Federal Leadership in Environmental, Energy, and Economic Performance*, establishes requirements for systematic, comprehensive approaches to meeting environmental stewardship commitments. EO 13423 requires some Bureau of Reclamation water-related contracts to address these commitments, as they pertain to contractual responsibilities of the parties. Reclamation develops standard contract articles to cover contractual provisions that are commonly required in its contracts. There are currently 32 of these standard articles, which are required in contracts according to type under Reclamation Manual¹ Policy, *Reclamation Standard Water-Related Contract Articles* (PEC P10). The articles themselves appear in Reclamation Manual D&S PEC 10-01 through PEC 10-32.

Reclamation has developed a proposed new standard article (Standard Article 33) to address requirements in EO 13423, as amended and supplemented. Proposed Standard Article 33 appears in the draft RM release D&S PEC 10-33, which is provided below for review. The purpose of draft PEC 10-33 is to establish the standard text for the proposed Article and to address matters relating to its purpose and use. Draft revisions to PEC P10 show what contracts will require the proposed Standard Article 33; these revisions are also available for review at <http://www.usbr.gov/recman/drafts/pec-p10webdraft.pdf>. Draft PEC 10-33, in coordination with the draft revisions to PEC P10, is designed to meet requirements under EO 13423 both for Reclamation contracting and environmental stewardship at Reclamation facilities.

EO 13423 states:

“In implementing the policy set forth in section 1² of this order, the head of each agency shall *** ensure that contracts entered into after the date of this order for contractor operation of government-owned facilities or vehicles require the contractor to comply with the provisions of this order with respect to such facilities or vehicles to the same extent as the agency would be required to comply if the agency operated the facilities or vehicles.”

The Council on Environmental Quality’s *Instructions for Implementing Executive Order 13423* state:

“Where tenant, contractor, and concessionaire activities affect an agency’s environmental, transportation, or energy issues, those activities shall be addressed in the development, implementation, and maintenance of the EMS [Environmental Management System].

¹ The Reclamation Manual is used to clarify program responsibility and authority and to document Reclamation-wide methods of doing business. All requirements in the Reclamation Manual are mandatory.

² “**Section 1. Policy.** It is the policy of the United States that Federal agencies conduct their environmental, transportation, and energy-related activities under the law in support of their respective missions in an environmentally, economically and fiscally sound, integrated, continuously improving, efficient, and sustainable manner.”

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Requirements shall be included in all appropriate contracts to ensure that the contractors' roles and responsibilities under the EMS are properly addressed. Where an agency owns or manages public lands on which non-governmental entities are present and whose activities are permitted, licensed, or otherwise authorized or regulated, that agency shall, at a minimum, consider the environmental impacts of such activities in its EMS."

Environmental Management Systems are required under EO 13423 as the framework in which agencies are to address their environmental impacts and achieve specific sustainability goals prescribe in the EO. Reclamation is addressing the requirement to implement EMS. In March, 2009, Reclamation issued RM D&S, *Environmental Management System Implementation* (ENV 05-01), to establish the requirements and responsibilities for EMS within the Bureau of Reclamation. Reclamation regions have primary responsibility for implementing EMS to address the environmental impacts of their activities and operations and have considered the activities and operations occurring in Reclamation-owned, contractor-managed facilities in the development of the EMS, as required.

Reclamation has developed proposed Standard Article 33 and draft PEC 10-33 to comply with the requirement that appropriate contracts address the parties' roles and under EMS, including the environmental stewardship objectives of EO 13423 required to be addressed through EMS. Standard Article 33 does not require that each contractor implement an EMS. Instead, it requires the development of plans to support Reclamation's EMS through the achievement of the sustainability goals of EO 13423. EO 13423 sets specific agency-wide objectives; how they may be best pursued in individual cases depends on variable factors, including the size and type of facilities involved, the size and type of organization responsible for operating those facilities, and case-specific circumstances and priorities. Proposed Standard Article 33 and draft PEC 10-33 are therefore designed to allow the flexibility needed to determine case-appropriate requirements within the greater process of meeting Reclamation's overall agency-wide environmental stewardship obligations.

Please see draft PEC 10-33 below.

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Subject: Reclamation Standard Water-Related Contract Articles, Standard Article 33: Environmental Stewardship.

Purpose: To provide requirements for the content and application of Standard Article 33 for the benefit of supporting general policy and specific requirements set forth in Reclamation Manual Policy PEC P10, *Reclamation Standard Water-Related Contract Articles*.

Authority: The Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), and acts amendatory and supplementary thereto; the Clean Air Act of 1955, as amended (42 U.S.C. § 7401, et seq.); the Clean Water Act of 1948, as amended (33 U.S.C. § 1251, et seq.); Executive Order 13423, *Strengthening Federal Environmental, Energy and Transportation Management*; Executive Order 13514, *Federal Leadership in Environmental, Energy, and Economic Performance*.

Approving Official: Director, Policy and Administration

Contact: Water and Environmental Resources Division, 84-55000

1. **Introduction.** This Directive and Standard (D&S) provides the text for Standard Article 33 and addresses related requirements. Paragraph 4 of Reclamation Manual (RM) Policy PEC P10, *Reclamation Standard Water-Related Contract Articles* (PEC P10), indicates which contracts require Standard Article 33. In general, Standard Article 33 is required where the contractor is or will be responsible for operating and maintaining Federal facilities. It states that the contractor is responsible for complying with environmental requirements to the same extent that Reclamation would be if it were operating and maintaining the same facilities. It also states that, as a part of this responsibility, the contractor is required to develop and adopt a plan to assist Reclamation in meeting environmental stewardship commitments related to the Federal facilities in the contractor's care.
2. **Applicability.** This D&S applies to Reclamation staff and officials involved in the contracting process for contracts requiring Standard Article 33 under Paragraph 4 of PEC P10.
3. **Definitions.** See Paragraph 3 of RM Policy ENV P05, *The Bureau of Reclamation's Commitment to Environmental Stewardship*.

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4. **Responsibilities.** Regional Directors are responsible for ensuring that Standard Article 33 is included in contracts in accordance with Paragraph 4 of PEC P10 or for obtaining authority from the Commissioner to modify or omit Standard Article 33 in accordance with Paragraph 3 of PEC P10.
5. **Text of Standard Article 33.**

ENVIRONMENTAL STEWARDSHIP³

The parties agree that the operation and maintenance of Federal facilities by the Contractor and/or Contracting Officer pursuant to this contract is subject to the requirements of Executive Order 13423, *Strengthening Federal Environmental, Energy and Transportation Management*, as amended and supplemented by Executive Order 13514, *Federal Leadership in Environmental, Energy, and Economic Performance*, and as it may be further amended or supplemented in the future, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law. As a part of this responsibility, the Contractor shall develop a plan to assist Reclamation, to the maximum extent practicable, in meeting environmental stewardship commitments applicable to the Federal facilities that the Contractor operates and maintains. The Contractor agrees to consult with the Contracting Officer in the development of such plan and to work in good faith toward achieving the goals in the plan. Reclamation's environmental stewardship commitments for the facilities and the commitments to be covered by the Contractor's plan according to this Article may include any or all of the following, as determined by Reclamation:

- A. reduce greenhouse gas emissions;

³ Approved [insert date on which Standard Article 33 is approved by Director, Policy & Administration].

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- B. reduce energy consumption and increase energy efficiency and use of renewable energy, including bioenergy;
- C. reduce potable water consumption;
- D. reduce vehicle fleet consumption of petroleum products, and increase use of alternative fuel vehicles and alternative fuels;
- E. incorporate sustainability into building design, construction, major renovation, operation, and leasing;
- F. practice electronic stewardship by purchasing, using and disposing of electronic equipment in an environmentally sound manner;
- G. maximize the acquisition of environmentally preferable goods and services, choosing biobased, energy-efficient, water-efficient, and recycled-content products, where feasible;
- H. reduce or eliminate the generation of toxic or hazardous chemicals;
- I. reduce solid waste generation and increase reuse and recycling of materials; and/or
- J. ensure adequate training of staff working in activities and operations with potential for negative environmental impacts.